

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRADLEY ALLEN GRUBHAM,

Petitioner,

v.

STATE OF WASHINGTON, et al.,

Respondent.

CASE NO. 3:13-cv-05646-RJB-JRC

ORDER ON PETITIONER'S  
MOTION TO SUPPLEMENT

Before the Court is petitioner's second amended habeas corpus petition (Dkt. 72), respondent's answer (Dkt. 76) and motion to include additional point and authority (Dkt. 84). In his motion, petitioner asks the Court to add additional authority to supplement his second amended petition with respect to the first aggressor jury instruction. Dkt. 84. Petitioner argues that the first aggressor jury instruction was ambiguous and misleading. *Id.* Respondent has not filed a response to petitioner's motion. *See* Dkt.

In his answer, respondent argues that petitioner has raised an issue of state law, and his claim is not a cognizable in federal court. Dkt. 76 at 14 fn. 2. Respondent is correct that a challenge to a jury instruction solely as an error of state law, does not raise a cognizable ground

1 for relief in federal habeas corpus proceedings. *See Estelle v. McGuire*, 502 U.S. 62, 71-72  
2 (1991); *Hallowell v. Keve*, 555 F.2d 103, 106 (3rd Cir. 1977); *Williams v. Calderon*, 52 F.3d  
3 1465, 1480–81 (9th Cir.1995), *cert. denied*, 516 U.S. 1124 (1996). To state a claim for federal  
4 habeas relief, petitioner must challenge “whether the ailing instruction by itself so infected the  
5 entire trial that the resulting conviction violates due process.” *Estelle*, 502 U.S. at 72 (citation  
6 omitted); *Jeffries v. Blodgett*, 5 F.3d 1180, 1195 (9th Cir. 1993), *cert. denied*, 510 U.S. 1191  
7 (1994). A jury instruction violates due process when it relieves the prosecution of its burden in  
8 proving every element of the offense beyond a reasonable doubt. *See Middleton v. McNeil*, 541  
9 U.S. 433, 437 (2004) (“In a criminal trial, the State must prove every element of the offense, and  
10 a jury instruction violates due process if it fails to give effect to that requirement.” *citing*  
11 *Sandstrom v. Montana*, 442 U.S. 510, 520–21 (1979)).

12 Although the Court recognizes that petitioner’s second amended petition is not entirely  
13 clear, petitioner argues that the ambiguous instruction denied him his ability to present his theory  
14 of self-defense, and that the state was relieved of its burden to prove every element of the offense  
15 beyond a reasonable doubt. Dkt. 75-1 at 20. Petitioner also contends that the first aggressor jury  
16 instruction was ambiguous and that the ambiguity of the instruction allowed the state to  
17 knowingly misstate the law of that instruction. *Id.* at 18-20. Petitioner cites to several federal  
18 court cases. *Id.* at 20 (*citing* “*Winship*, 397 U.S. 358 (1970)[;] *Sandstrom v. Montana*, 442 U.S.  
19 [442 U.S. 510 (1979)]; and also *citing Arizona v. Fulimante*, 499 U.S. 279, 306-310 (1991)”).  
20 Thus, a liberal construction of this claim finds that petitioner has sufficiently alleged that the  
21 ambiguous first aggressor jury instruction violated due process, and thus, that petitioner has  
22 stated a separate claim for relief under federal law. *See* Dkt. 75-1 at 20.

1 Because petitioner raised this claim in his second amended petition, the Court denies  
2 petitioner's motion to supplement (Dkt. 84) as moot. Moreover, the Court notes that this case has  
3 been pending for over three years and the Court has previously advised petitioner that it will not  
4 entertain any future motions to supplement or amend his petition. *See* Dkt. 69. However, because  
5 respondent has not yet addressed petitioner's claim related to the ambiguity of the first aggressor  
6 jury instruction as a violation of due process, the Court finds that supplemental briefing is  
7 required.

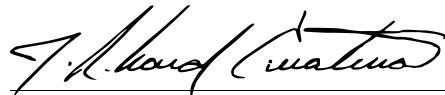
8 The Court orders respondent to file a supplemental brief limited to five pages to address  
9 the remaining due process jury instruction claim on or before January 16, 2017. Petitioner may  
10 file a response, limited to five pages, on or before January 20, 2017. Petitioner is advised that his  
11 response is strictly limited to responding to the arguments raised in respondent's supplemental  
12 brief, and his due process jury instruction claim. Any arguments that are outside the scope of  
13 respondent's supplemental brief will not be considered by the Court.

14 Accordingly, it is **ORDERED**:

15 (1) Respondent shall file a supplemental brief, limited to five pages, addressing  
16 petitioner's due process jury instruction claim **on or before January 16, 2017**. Petitioner may  
17 file a response, limited to five pages, **on or before January 20, 2017**.

18 (2) The Clerk is directed to **strike** the noting date of the petition (Dkt. 72) and **re-**  
19 **note** it for **January 20, 2017**.

20 Dated this 27th day of December, 2016.

21  
22   
23 J. Richard Creatura  
24 United States Magistrate Judge